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IN THE

Supreme Court of the United States

No. 278

GIBRALTAR FACTORS CORPORATION,
Appellant,

vs.

WILLIAM SLAPO and DAVID COHN, Escrowee,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

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On the Statement.

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WILLIAM SLAPO and DAVID COHN, escrowee,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

This is an appeal from the final judgment sustaining the constitutionality of the subject statute entered by the New Jersey Supreme Court, the New Jersey Court of last resort, on February 25, 1957, affirming a judgment of the New Jersey Superior Court, Appellate Division, entered September 5, 1956, which affirmed a summary judgment against the appellant entered on January 26, 1956, in the Passaic County District Court, Paterson, New Jersey.

This statement is submitted to show that the Supreme Court of the United States has jurisdiction and that a substantial question is presented.

Opinions Below.

The opinion of the New Jersey Supreme Court is reported in 23 N. J. 459, 129 A. 2d 567 (1957) and that of the New Jersey Superior Court, Appellate Division is reported at 41 N. J. Super. 381, 125 A. 2d 309 (1956). Both opinions are appended here as Appendix A-1 and Appendix A-3 respectively.

No written opinion was filed in the trial court but the facts of the case and the proceedings in that court were incorporated by a stipulation of counsel approved by the trial judge in an Agreed Statement in Lieu of Record, appended here as Appendix A-5.

Jurisdiction.

Throughout the entire course of this litigation, appellant has attacked the subject statute, N. J. S. 2A:44-166, (Appendix A-6) as violative of Section 1, of the Fourteenth Amendment of the Constitution of the United States. From the final judgment of the Supreme Court of New Jersey affirming the validity of the statute, appellant filed its notice of appeal to the Supreme Court of the United States, in the Passaic County District Court, Paterson, New Jersey on May 16th, 1957 (Revised Rule 10 paragraph 3).

The jurisdiction of the Supreme Court to entertain this appeal is conferred by 28 U. S. C. 1257 (2). This jurisdiction is sustained and illustrated by these cases; *Williams* v. *Bruffy*, 96 U. S. 176, 183; *Largent* v. *Texas*, 318 U. S. 418; *Bethlehem Steel Co.* v. *New York Board*, 330 U. S. 767; *LaCrosse Tel. Corp.* v. *Wisconsin Board*, 336 U. S. 18; *Atchison, Topeka & S. F. R. R. Co.* v. *Public Utility Commission*, 346 U. S. 346

N. J. S. 2A:44-166 reads:

> "A rentor shall be entitled to a lien on machinery and other chattels to the extent of the rentee's interest therein for the amount of unpaid rent, from the date the rent is unpaid.

Such lien hereby created shall have priority and be paramount to any title, lien, interest, mortgage, judgment or other encumbrance created or acquired after machinery or other chattels are placed in the premises. Such priority shall extend only to the amount of unpaid rent for not more than 6 months."

Question Presented.

Can a state statute, designed solely for the economic protection of a group of individuals and which is totally unrelated to the exercise of the police power, supersede without notice appellant's prior lien as a chattel mortgagee in favor of a later landlord's lien without violating constitutional guarantees of due process?

Statute Involved.

New Jersey Statute N. J. S. 2A:44-166.

Statement.

A. Facts and Trial Court Proceedings.

The facts of this case and the proceedings in the trial court were stipulated by counsel and approved by the trial judge (Appendix A-5). The agreed statement in lieu of record is here reprinted for convenience and to indicate the manner in which the federal question here sought to be reviewed was initially raised (paragraphs 7 to 11 inclusive).

1. Plaintiff-appellant is a New York corporation engaged in the business of making secured loans. On September 7, 1954, it loaned to the third party defendant, Dura Plaque Inc., which is a New Jersey Manufacturing Corporation, the sum of $2,000.00 secured by a Chattel Mortgage.

2. Dura Plaque occupied, for its business, premises at 80 Glover Avenue, West Paterson, N. J., which were leased from defendant William Slapo.

3. Dura Plaque subsequently encountered financial difficulties and defaulted in its loan obligations to Gibraltar which foreclosed its chattel mortgage on the debtor's machinery. Contemporaneously, the landlord defendant, William Slapo, under N. J. S. 2A:44-166 asserted against the machinery a lien in the sum of $900.00 for six months unpaid rent.

4. By agreement between Mr. Slapo and Gibraltar, the latter conducted its foreclosure sale in March, 1955, and deposited $830.00 of the proceeds with defendant David Cohn, Esq., in escrow pending determination of the validity of Mr. Slapo's claim for that sum.

5. On July 15, 1955, plaintiff, Gibraltar Factors; filed a suit in the Passaic County District Court for a judicial determination that it was the owner of the $830.00 held in escrow. Defendant William Slapo, answered asserting his right to the money. Defendant David Cohn answered stating that as escrowee he was prepared to pay the escrow into Court for its disposition. Thereafter, on defendants' motion, an order was made whereby Dura Plaque was joined as a third-party defendant but did not appear or defend.

6. Thereafter, defendants moved for summary judgment against both Gibraltar Factors and Dura Plaque on the ground that no genuine fact issue existed in the case.

7. Plaintiff filed a cross-motion for summary judgment on the ground that it was entitled thereto as a matter of law.

8. Both of the said motions were argued before the Honorable John Ward in the Passaic County District Court on November 30, 1955. At that time, plaintiff's counsel conceded that William Slapo as landlord was owed the sum

of $900.00 by Dura Plaque but argued that defendant Slapo's rights to the $900.00 sub judice were predicated upon the lien conferred by the statute N. J. S. 2A:44-166. It was asserted that the statute was unconstitutional; that the lien arising by virtue of the statute was therefore invalid and that in consequence no claim existed in defendant for or with respect to the proceeds of the sale in satisfaction of plaintiff's mortgage. The Court thereupon adjourned final disposition of the motions pending the submission of memoradna on the Constitutional question.

9. On December 21, 1955, the adjourned date for further argument of the motion, Judge Ward expressed doubt of his power as a District Court Judge to declare a New Jersey Statute unconstitutional and granted defendants' motion.

The Court further denied plaintiff's motion.

10. Judgment accordingly entered on January 26, 1956.

11. Plaintiff now appeals solely from the Court's denial of its motion for summary judgment which it maintains should have been granted as a matter of law.

QUESTIONS PRESENTED.

The questions raised by this appeal are

1. Do the provisions of N. J. S. 2A:44-166 violate the Constitution of the United States and New Jersey.

2. Assuming that the statute is unconstitutional, is plaintiff entitled to the fund sub judice.

* * * * * * *

GEORGE H. ROSENSTEIN,
Attorney for
Plaintiff-Appellant.

DAVID COHN,
Attorney for
Defendants-Respondent.

The foregoing agreed statement in lieu of record is hereby approved.

JOHN M. B. WARD,
D. C. J.

Questions by the Appellate Court below have indicated the need for the following supplementary facts which have not been challenged by appellees.

Defendant William Slapo's lease was executed on June 10, 1954 and plaintiff's chattel mortgage is dated September 7, 1954. The first default in rental payments was for the month of October 1954.

B. Appellate Proceedings.

Both at the trial level and in the appellate courts below, appellant's attack on the subject statute has been directed to that section which from the moment of rent default renders the landlord's lien paramount to earlier liens. We have maintained that it is constitutionally deficient in that it lacks provision for notice to the prior lienor of the impact of the rent lien. The effect, as in the instant case, is this: from the moment that the rent falls in arrears, the statutory lien attaches, superseding *pro tanto* the chattel mortgagee's prior lien. This replacement is effected without notice to or the knowledge of the prior lienor who is thus deprived of his security without opportunity for its protection. We have steadfastly maintained that such a loss contravenes the due process clause of Section 1 of the Fourteenth Amendment. In regard to that clause, this Court has succinctly stated:

> "Whatever else may be uncertain about the definition 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for hearing."
>
> *Ochoa* v. *Hernandez y Morales*, 230 U. S. 139, 161, 57 L. ed. 1427, 1437.

It is uniformly held that a mortgage lien is property and the asserted vice of the statute lies in its taking appellant's property and giving it to the appellees without notice or an opportunity for hearing.

The Supreme Court of New Jersey in its decision upholding the statute (Appendix A-1) adopts, as a major premise for its opinion, a finding that the subject statute is an exercise of the police power.

> "When the legislature passed the 1933 enactment it evidenced its belief that there was an evil of sufficient magnitude to warrant the exercise of its police powers for the protection of landlords * * *" (Opinion, 23 N. J. 463, 129 A. 2d 567, Appendix A1, p. 14).

We respectfully submit that this premise is error and that the error vitiates the Court's conclusion. We understand the law to be long settled that in the exercise of the police power, private property rights necessarily give way to a law protecting the general health, safety, morals or welfare of the people.

The judicial history of zoning legislation amply illustrates the point. But for judicial sanction of legislative invasion of private rights, the legislative object and aim must accord with the objects and aims of the police power. This Court holds that the power is exercisable only to serve a basic interest of society; it is not invocable for the economic protection alone of particular individuals or groups of individuals.

> *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231.

The subject statute is explictly designed for the economic protection of certain individual landlords at the expense of chattel mortgagees. Under the cited law, it cannot be a police power legislation.

If it is not such, then the constitutional protection of private property rights should intervene and strike it down as an unlawful aggrandizement of one private person at the expense of another.

The further reasoning of the New Jersey Court flows from the premise which, as argued, we believe to be fallacious. In consequence, we respectfully submit that such reasoning and the supporting authority cited is necessarily permeated with and vitiated by the fallacy of the fountain-head premise.

The opinion places some reliance upon the decision of this Court in *Provident Institution, etc.* v. *Mayor etc. of Jersey City*, 113 U. S. 506, 28 L. ed. 1102.

The subordination of a mortgage lien to that for municipal water rents was there upheld. The case differs greatly from that at bar in this respect. The statute there was for the provision of a water supply to a great city, a function of government for the general welfare and as such clearly a police power enactment (113 U. S. at 516, 28 L. ed. at 1106), and, accordingly, the Legislature could exercise powers which could not and should not have been exercised in our case.

The subject statute was enacted in 1933 and has not been attacked until now on constitutional grounds. The opinion under review intimates that this longevity, if not according the statute sanctuary, at least imposes barriers to the path of judicial scrutiny. We respectfully submit that this Court has held otherwise and that constitutional infirmity is reviewable always without let or hinderance. *Boyd* v. *Alabama*, 94 U. S. 646, 24 L. ed. 302.

The opinion concludes with the observation that appellant, being charged with knowledge of the statute should have protected itself from its impact. We submit that if the law is invalid as we suggest knowledge of a bad law cannot serve to rectify the statutory omission of notice which renders the law bad. We further submit that such a bad law is not a silent factor in all contracts so as to serve for the omitted notice. Cf. *Wuchter* v. *Pizzutti*, 103 N. J. L. 13 (E. & A. 1926), reversed 276 U. S. 137, 72 L. ed. 446; *Cleveland* v. *Clements Bros. Construction Co.*, 67 Ohio St. 197 (Sup. Ct. 1902), 59 L. R. A. 775, 782.

The Court suggested that since plaintiff was charged with notice of the statute, it could have protected itself by the production of monthly rent receipts from the mortgagor.

If, as we have argued, the act is bad, it does not seem that in justice plaintiff should be required to take any affirmative action to avoid its deleterious effect.

If legislation be unlawful, the remedy should be in the Courts and not in protective action by those subjected to it. But prescinding from this objection, the futility of the suggested remedy may be illustrated by the following example: Let us assume a chattel mortgage for $1,000.00 secured by a lien on machinery worth $1,000.00. The mortgagor is a tenant at a monthly rental of $1,000.00. Rent is due on July 1st and can be paid without default until 11:59 P. M. of that day. If not paid at 12:01 A. M. July 2nd, default has immediately occurred. The landlord's lien thereupon attaches immediately superseding that of the mortgagee. Requests for the rent receipt at 12:02 A. M. would be a vain ceremony for there is nothing the mortgagee can do to avoid or prevent the practical destruction of his lien. It is gone and contract provisions for rent receipts can neither save nor help.

We submit that the example brings into focus the injustice flowing from the constitutional deficiency of the statute and its patent conflict with the due process clauses of the State and Federal Constitutions.

The mandate (Appendix A-2) of the Supreme Court of New Jersey affirmed the judgment of the Superior Court, Appellate Division.

The Question Is Substantial.

The monetary sum here involved, relatively, is not substantial but the question, one with a double aspect, is substantial. In the particular aspect, appellant conceives itself unlawfully deprived of property. It respectfully maintains that the rectification of the injustice asserted lies within the province of this Court. That province, historically, ranges far and ranges deep. The Court has been, in the words of Pope, like one "Who sees with equal eye, as God of all, a hero perish or a sparrow fall."

The immediate grievance here is perhaps but a sparrow; but injustice, if such it be, can never be unimportant.

But in a larger sense, the case presents an aspect which might well engage the attention of the Court.

This Court has observed that "the power to tax is the power to destroy." The statement, although perhaps garbled out of context in popular usage, is nevertheless essentially here. We respectfully suggest that it can be said with equal truth that the police power, untrammeled, can destroy private right. The great dictatorships have flourished and flourish by the extinction of private right. The State is everything, the individual nothing. Police states spring into existence and are maintained by unbridled police power exercised in the guise of state welfare. The increasing complexity of our own society has entailed gradual and necessary broadening of our police power. It extends now to areas unthinkable a century ago.

But this broadening must be balanced and circumscribed by a recognition of the ultimate inviolability of individual right. This Court has always done so. We respectfully submit that the aspect of this case which should render it attractive for review lies in a broadening of the police

power. If any law, prescinding from its character and objects, can be labelled as a police power enactment and as such warrant an otherwise unlawful invasion of private right, then the fact of danger need not be labored.

Respectfully submitted,

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THOMAS A. O'CALLAGHAN,
On the Statement.

APPENDIX A-1.

Opinion, New Jersey Supreme Court.

SUPREME COURT OF NEW JERSEY,

No. A-76, September Term, 1956.

GIBRALTAR FACTORS CORPORATION;
Plaintiff-Appellant,
vs.
WILLIAM SLAPO and DAVID COHN,
Defendants-Respondents.

Argued January 28, and February 4, 1957; decided

MR. GEORGE H. ROSENSTEIN argued the cause for the appellant (MR. THOMAS A. O'CALLAGHAN, On the Brief).

MR. ALBERT L. COHN argued the cause for the respondents (MR. DAVID COHN, Attorney).

The opinion of the Court was delivered by

JACOBS, *J.*

The Appellate Division, in an opinion reported at 41 N. J. Super. 381 (1956), affirmed the judgment for defendants which had been entered in the Passaic County District Court and the plaintiff has appealed under R. R. 1:2-1(a). Although the Appellate Division properly heard the matter under an agreed statement in lieu of record under R. R. 1:6-2, the defendants now tender an ex parte "Supplemental Statement of Facts" which is disputed by the plaintiff. This belated tender is, of course, rejected although we note that the factual dispute in nowise affects the constitutional validity of N. J. S. 2A:44-166 which

was the sole question presented to and passed upon by the Appellate Division and is the only issue properly before us. Cf. *State* v. *Bogen*, 13 N. J. 137, 144 (1953), cert. denied, 346 U. S. 825, 98 L. Ed. 350 (1953); *Journeymen Barbers, etc. Local 687* v. *Pollino*, 22 N. J. 389, 395 (1956).

The plaintiff Gibraltar Factors Corporation was a New York corporation engaged in the business of making loans. Dura Plaque, Inc., was a New Jersey manufacturing corporation which had its machinery in premises which were located at 80 Glover Avenue, West Paterson, New Jersey and had been leased by it on July 1, 1954, from the defendant William Slapo. On September 7, 1954, Gibraltar loaned Dura Plaque $2,000 secured by a chattel mortgage on its machinery. Thereafter Dura Plaque defaulted, Gibraltar instituted foreclosure, and Slapo asserted a lien under N. J. S. 2A:44-166 for six months' unpaid rent. By agreement between Gibraltar and Slapo a foreclosure sale was conducted and the proceeds were placed in escrow pending ultimate determination of Slapo's claim to priority. Gibraltar instituted its action in the District Court against Slapo and on cross-motions for summary judgment Slapo prevailed. Gibraltar does not question that under the express terms of N. J. S. 2A:44-166 Slapo's claim is entitled to priority; it contends, however, that the statute "is unconstitutional in that it deprives plaintiff of is property without due process of law by substituting without notice the lien of the landlord for that of the plaintiff".

In 1933 the Legislature passed an act to give "a lien to owners of mill, factory, loft and other manufacturing space upon the machinery or other chattels of those to whom space has been rented." L. 1933, c. 237, p. 637. In a preamble the Legislature pointed out that it had been the practice of some manufacturers to place mortgages on their ma-

chinery and other chattels to the great prejudice of their landlords to whom rent was due; and in the enacting provisions it declared that such landlords shall have liens which shall have "priority and be paramount to any title, lien, interest, mortgage, judgment or other encumbrance created or acquired after machinery or other chattels are placed in the premises; provided, however, that such priority shall extend only to the amount of unpaid rent for not more than six months." The 1933 statute was substantially reenacted as part of the Revision of 1937 (R. S. 2:60-230) and as part of the 1951 revision of the laws relating to the administration of civil and criminal justice. N. J. S. 2A:44-165 *et seq.* It has long been applied without any question being raised as to its constitutionality. *Singer* v. *Murray Holding Co.*, 23 N. J. Misc. 24 (Cir. Ct. 1944), aff'd, 133 N. J. L. 342 (E. & A. 1945); *Blanos* v. *Eastwood Realty Co.*, 116 N. J. L. 1 (E. & A. 1935). Cf. *Lerman* v. *Lincoln Novelty Co.*, 130 N. J. Eq. 144 (Ch. 1941). While that circumstance does not determine the issue it is an important factor which the courts do not ignore. *Legg* v. *Passaic County*, 122 N. J. L. 100, 102 (Sup. Ct. 1939), aff'd, 123 N. J. L. 263 (E. & A. 1939); *Doremus* v. *Bd. of Education of Hawthorne*, 5 N. J. 435, 452 (1950), appeal dismissed, 342 U. S. 429, 96 L. Ed. 475 (1952). In the *Legg* case Justice Parker remarked that a fundamental policy of our jurisprudence is not to invalidate a statute which has been in force without any substantial challenge for many years "unless its unconstitutionality is obvious"; even without the lapse of time doubts are always resolved in favor of constitutionality. See *McSweeney* v. *Equitable Trust Co.*, 16 N. J. Misc. 193, 196 (Sup. Ct. 1938), aff'd, 127 N. J. L. 299 (E. & A. 1941), appeal dismissed, 315 U. S. 785, 86 L. Ed. 1191 (1942).

When the Legislature passed the 1933 enactment it evidenced its belief that there was an evil of sufficient magnitude to warrant the exercise of its police powers for the

protection of landlords of manufacturing establishments against subsequently created chattel mortgages. In the absence of anything in the record to indicate the contrary we assume that its belief was well grounded in fact and that its classification was not unreasonable. *Reingold* v. *Harper*, 6 N. J. 182, 196 (1951); *Jamouneau* v. *Harner*, 16 N. J. 500, 515 (1954), cert. denied, 349 U. S. 904, 99 L. Ed. 1241 (1955). Cf. *Gundaker Central Motors* v. *Gassert*, 23 N. J. 71, 81 (1956). In *Clark* v. *Paul Gray*, 306 U. S. 583, 594, 83 L. Ed. 1001, 1010 (1939), the United States Supreme Court aptly remarked that a state legislature's classification is "presumed to be supported by facts known to it, unless facts judiciafly known or proved preclude that possibility." Statutes creating liens in favor of landlords and other designated classes of persons are common and have been widely upheld; many of the pertinent cases throughout the country are collected in 16A C. J. S., *Constitutional Law* § 631, p. 879 (1956), and many of our pertinent statutes are found in Chapter 44 of Title 2A of our Revised Statutes. Thus N. J. S. 2A:44-21 provides for a lien in favor of a garage keeper who stores or repairs motor vehicles; although his lien is now subordinate to that of the chattel mortgagee (cf. N. J. S. 2A:44-2) an earlier statute (L. 1915, c. 312, p. 556) had given it priority. See *Cattell* v. *Rehrer*, 94 N. J. Eq. 292, 294 (Ch. 1922). Cf. *Lanterman* v. *Luby*, 96 N. J. L. 255, 261 (E. & A. 1921); *Annot., Priority as between artisan's lien and chattel mortgage*, 36 A. L. R. 2d 229, 240 (1954). The constitutionality of the earlier statute was sustained in *Crucible Steel Co.* v. *Polack Tyre & Rubber Co.*, 92 N. J. L. 221 (E. & A. 1918) where Justice Kalisch cited *Provident Institution, etc.* v. *Mayor, etc. of Jersey City*, 113 U. S. 506, 28 L. Ed. 1102 (1885) which had, in turn, upheld an 1852 New Jersey statute giving water rent liens priority over mortgages. See *Shaler* v. *McAleese*, 73 N. J. Eq. 536, 537 (Ch. 1907); *Ford Motor Co.* v. *Kearny*, 91 N. J.

L. 671, 674 (E. & A. 1918). In the *Provident Institution* case, *supra*, Justice Bradley had this to say in answer to the mortgagee's contention that its liens had been unconstitutionally displaced:

> "What may be the effect of those statutes, in this regard, upon mortgages which were created prior to the Statute of 1852, it is unnecessary at present to inquire. The mortgages of the complainant were not created prior to that statute, but long subsequent thereto. When the complainant took its mortgages, it knew what the law was; it knew that, by the law, if the mortgaged lot should be supplied with Passaic Water by the city authorities, the rent of that water, as regulated and exacted by them, would be a first lien on the lot. It chose to take its mortgages subject to this law; and it is idle to contend that a postponement of its lien to that of the water rents, whether after accruing or not, is a deprivation of its property without due process of law. Its own voluntary act, its own consent, is an element in the transaction. The cases referred to by counsel to the contrary, holding void a consent exacted contrary to the Constitution, have no bearing on the present cases."

In *Silverstein* v. *Keane*, 19 N. J. 1, 13 (1955) Justice Burling had more recent occasion to refer to the well-settled doctrines that the law is a silent factor in every contract and that parties who enter into transactions in this State must be presumed to have had the New Jersey law in mind. When Gibraltar was asked to lend money on the security of Dura Plaque's machinery in the leased premises at West Paterson, it knew or was bound to know that the transaction would be subject to the many applicable New Jersey statutes including particularly N. J. S. 2A:44-

166. In its light Gibraltar knew that if Dura Plaque thereafter defaulted in the payment of rent its landlord could properly assert a prior lien on the machinery in the leased premises to the extent of six months' unpaid rent. Nevertheless it voluntarily made the loan with the understanding that the machinery would remain in the leased premises and took no steps to insure that it would receive monthly receipts evidencing Dura Plaque's payment of rent. Gibraltra is now in no just position to complain about the accrual of the rental obligation and the landlord's exercise of his statutory right to priority. We consider the attack on the constitutionality of N. J. S. 2A:44-166 to be wholly without merit and the judgment of the Appellate Division is accordingly;

Affirmed.

APPENDIX A-2.

Mandate, New Jersey Supreme Court.

This cause having been duly argued before this Court by Mr. George H. Rosenstein, counsel for the appellant and Mr. Albert L. Cohn, counsel for the respondent, and the Court having considered the same.

It is hereupon ordered and adjudged that the judgment of the said Superior Court—Appellate Division is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Appellate Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable Arthur T. Vanderbilt, Chief Justice, at Trenton on the 25th day of February, 1957.

JOHN H. GILDEA,
Clerk of the Supreme Court.

APPENDIX A-3.

Opinion, Superior Court, Appellate Division.

Argued August 13, 1956. Decided September 5, 1956.

Before Judges EWART, GRIMSHAW and PINDAR.

MR. GEORGE H. ROSENSTEIN argued the cause for appellant; (MR. THOMAS A. O'CALLAGHAN on the brief.)

MR. DAVID COHN argued the cause for respondents. (MESSRS. ALBERT L. COHN and GEORGE K. REIDY on the brief.)

GRIMSHAW, *J. S. C.*

The sole question raised by this appeal is the constitutionality of N. J. S. A. 2A:44-166, which Statute appellant claims deprives it of its property without due process of law, in violation of Section I of the Fourteenth Amendment to the Federal Constitution and Article I, Section I of the New Jersey Constitution. In brief, the Statute gives to a rentor a lien for unpaid rent for a period of not more than six months, on the machinery and other chattels of the rentee, and directs that this lien shall be paramount to and have priority over any title, lien, interest, mortgage, judgment or other encumbrance created or acquired after the machinery or other chattels are placed in the rented premises. A "rentor" is defined as one who rents a mill, factory or loft to another for manufacturing purposes. A "rentee" is defined as the one who rents the space.

The facts are not in dispute.

About July 1, 1954, the defendant Dura Plaque leased from the defendant Slapo, premises in West Paterson, and went into occupancy. Thereafter, on September , 1954, the plaintiff Gibraltar Factors lent Dura Plaque $2,000, secured by a chattel mortgage. Dura Plaque defaulted and Gibraltar foreclosed on the machinery covered by the mortgage. Slapo, at the same time, asserted a lien against the

machinery for six months' unpaid rent in the amount of $900. By agreement between Gibraltar and Slapo the foreclosure sale was held in March of 1955, and the sum of $833 was realized. That amount was deposited with Slapo's attorney, pending a determination of the respective rights of Gibraltar and Slapo.

Gibraltar instituted suit in the District Court. Both Gibraltar and Slapo moved for summary judgment. At the argument the Court granted Slapo's motion and denied that of Gibraltar. Gibraltar appealed.

It argues here that the Statute is unconstitutional in that it fails to provide for notice to it of the landlord's lien for rent falling due subsequent to the recording of the chattel mortgage. We consider this contention to be without merit.

There is a presumption that a Statute is constitutional and it will not be declared unconstitutional unless its repugnance to the Constitution is so manifest as to leave no room for reasonable doubt. *Reingold* v. *Harper*, 6 N. J. 182 (Sup. Ct. 1951); *Magierowski* v. *Buckley*, 39 N. J. Super. 534 (App. Div. 1956). Also it is elementary that all persons are conclusively presumed to know the law of the land, and ignorance thereof excuses no one. The law is a silent factor in every contract and the parties are presumed to have contracted with reference to it. *Silverstein* v. *Keane*, 19 N. J. 1 (Sup. Ct. 1955).

The Statute in question was made part of the body of the law long before plaintiff made its loan and Dura Plaque executed the chattel mortgage. The plaintiff being chargeable with notice of what the Statute contains could have protected itself by requiring the production of monthly rent receipts by the mortgagor. It failed to do so and must take the consequences.

We are of the opinion that the Statute is constitutional.

Affirmed.

APPENDIX A-4.

Mandate, Superior Court, Appellate Division.

(Filed October 3, 1956.)

This cause having been duly argued before this Court by George H. Rosenstein, counsel for the appellant and David Cohn, counsel for the respondents, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Passaic County District Court is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless a Notice of Appeal to the Supreme Court or a Notice of Petition for Certification has been filed or is pending, or unless otherwise ordered by this Court and that the record be remitted to the Passaic County District Court, to be there proceeded with in accordance with the rules and practices relating to that Court, consistent with the opinion of this Court.

WITNESS the Senior Judge of the Part, Superior Court of New Jersey, Appellate Division, at Trenton on the 5th day of September, 1956.

I. GRANT SCOTT,
Clerk of the Superior Court.

APPENDIX A-5.

Agreed Statement in Lieu of Record (R. R. 1:6-2.).

Passaic County District Court

LAW DIVISION.

Docket No. 46-74.

GIBRALTAR FACTORS CORPORATION,
Plaintiff.

vs.

WILLIAM SLAPO and DAVID COHN,
Escrowees,
Defendants.

Agreed Statement In Lieu of Record (R. R. 1:6-2).

It is hereby stipulated and agreed by and between George Rosenstein, attorney for plaintiff-appellant and David Cohn, attorney for defendants-respondents, that in accordance with R. R. 1:6-2 the following statement and portions of the record herein referred to be submitted in lieu of record on plaintiff's appeal in the above entitled action.

STATEMENT OF FACTS.

1. Plaintiff-appellant is a New York corporation engaged in the business of making secured loans. On September 7, 1954, it loaned to the third party defendant, Dura Plaqua Inc., which is a New Jersey Manufacturing Corporation, the sum of $2,000.00 secured by a Chattel Mortgage.

2. Dura Plaque occupied for its business, premises at 80 Glover Avenue, West Paterson, N. J., which were leased from defendant William Slapo.

Appendix A-5.

3. Dura Plaque subsequently encountered financial difficulties and defaulted in its loan obligations to Gibraltar which foreclosed its chattel mortgage on the debtor's machinery. Contemporancously, the landload defendant, William Slapo, under N. J. S. A. 2A:44-166 asserted against the machinery a lien in the sum of $900.00 for six months unpaid rent.

4. By agreement between Mr. Slapo and Gibraltar, the latter conducted its foreclosure sale in March, 1955, and deposited $830.00 of the proceeds with defendant David Cohn, Esq., in escrow pending determination of the validity of Mr. Slapo's claim for that sum.

5. On July 15, 1955, plaintiff, Gibraltar Factors, filed a suit in the Passaic County District Court for a judicial determination, that it was the owner of the $830.00 held in escrow. Defendant William Slapo, answered asserting his right to the money. Defendant David Cohn answered stating that as escrowee he was prepared to pay the escrow into Court for its disposition. Thereafter, on defendants' motion, an order was made whereby Dura Plaque was joined as a third-party defendant but did not appear or defend.

6. Thereafter, defendants moved for summary judgment against both Gibraltar Factors and Dura Plaque on the ground that no geniune fact issued existed in the case.

7. Plaintiff filed a cross-motion for summary judgment on the ground that it was entitled thereto as a matter of law.

8. Both of the said motions were argued before the Honorable John Ward in the Passaic County District Court on November 30, 1955. At that time, plaintiff's counsel conceded that William Slapo as landlord was owed the sum of $900.00 by Dura Plaque but argued that defendant Slapo's rights to the $900.00 sub judice were predicated

upon the lien conferred by the statute N. J. S. A. 2A:44-166. It was asserted that the statute was unconstitutional; that the lien arising by virtue of the statute was therefore invalid and that in consequence no claim existed in defendant for or with respect to the proceeds of the sale in satisfaction of plaintiff's mortgage. The Court thereupon adjourned final disposition of the motions pending the submission of memoranda on the Constitutional question.

9. On December 21, 1955, the adjourned date for further argument of the motion, Judge Ward expressed doubt of his power as a District Court Judge to declare a New Jersey Statute unconstitutional and granted defendants' motion.

The Court further denied plaintiffs motion.

10. Judgment accordingly entered on January 26, 1956.

11. Plaintiff now appeals solely from the Court's denial of its motion for summary judgment which it maintains should have been granted as a matter of law.

Questions Presented.

The questions raised by this appeal are:

1. Do the provisions of N. J. S. A. 2A:44-166 violate the Constitution of the United States and New Jersey.

2. Assuming that the statute is unconstitutional, is plaintiff entitled to the fund sub judice.

Portions of Record to Be Included.

1. There shall be annexed hereto and included as a part hereof, the following:

a. A certified copy of the judgment of the Passaic County District Court herein.

b. The Notice of Appeal and acknowledgment of service thereof.

Appendix A-5.

POINTS RELIED ON BY PLAINTIFF-APPELLANT.

1. N. J. S. A. 2A:44-166, violates the provisions of Section I of the Fourteenth Amendment of the Constitution of the United States and Article I, Section I of the New Jersey Constitution, and is therefore invalid because it deprives plaintiff of its property without due process of law.

GEORGE H. ROSENSTEIN,
Attorney for Plaintiff-Appellant.

DAVID COHN,
Attorney for Defendant-Respondent.

The foregoing agreed statement in lieu of record is hereby approved.

JOHN M. B. WARD,
D. C. J.

APPENDIX A-6.

Chapter 237, Laws of New Jersey, 1933, N. J. S. 2A:44-166.

"A rentor shall be entitled to a lien on machinery and other chattels to the extent of the rentee's interest therein for the amount of unpaid rent, from the date the rent is unpaid.

Such lien hereby created shall have priority and be paramount to any title, lien, interest, mortgage, judgment or other encumbrance created or acquired after machinery or other chattels are placed in the premises. Such priority shall extend only to the amount of unpaid rent for not more than 6 months."